

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

NORTHGATE II ASSOCIATES

Employer

and

Case 6-UC-410
(formerly 4-UC-363)

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO

Petitioner/Union

DECISION, ORDER AND CLARIFICATION OF BARGAINING UNIT

Upon a petition¹ duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before Andrew Brenner, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record³ in this case, the Regional Director finds:

¹ The Petition in this matter was duly filed in Region Four of the Board and captioned as Case 4-UC-363. Following the close of the hearing in this matter, the General Counsel, by Order dated November 5, 1999, transferred this case, now captioned as Case 6-UC-410, to Region Six of the Board for, inter alia, the preparation of the Decision in this matter. The Order further provides that upon issuance of the Decision, to the extent that further processing is appropriate to effectuate the issued Decision, the case will automatically transfer back and continue in Region Four as Case 4-UC-363.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St., NW., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by December 17, 1999.

³ The Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned. Following the filing of briefs in this matter, the Employer filed a Motion to Strike "Union Exhibit 1" which was attached to the Petitioner/Union's post-hearing brief, and to strike the second and third sentences on page 2 of the Petitioner/Union's brief wherein reference is made to that Exhibit. The Employer's Motion is based upon the Union's failure to offer the Exhibit into evidence at the hearing. No response was filed by the Petitioner/Union to this Motion. While my decision herein would not change if

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Communications Workers of America, AFL-CIO (herein called "the Union") is a labor organization within the meaning of Section 2(5) of the Act.

The Petitioner herein (also referred to as the Union) seeks to clarify a certified unit of all full-time and regular part-time maintenance technicians employed by the Employer at its Camden, New Jersey housing development; excluding office clericals, professional employees, managers, guards and supervisors as defined in the Act (herein the Unit) by specifically including in the Unit a position referred to by the Petitioner as the maintenance administrative assistant, a position currently occupied by Minerva Ubarry. The Employer avers that Ubarry's correct title is administrative assistant to the property manager and argues that the Unit should be clarified to exclude this position on the ground that Ubarry is an office clerical employee and/or an employee who lacks a sufficient community of interest to be included in the bargaining unit.

The Employer operates a housing development located at 500 North Seventh Street, Camden, New Jersey (herein Northgate II). Northgate II consists of a high-rise facility where approximately 300 senior citizens and disabled individuals reside, and a low-rise facility, which includes approximately 50 townhouses, where about 96 families live. Pauline Thomas, the Property Manager of Northgate II, is responsible for the overall supervision of the housing development.

the Exhibit was a part of the record, I nevertheless grant the Employer's Motion to Strike the Exhibit and the third sentence on page 2 of the Petitioner/Union's brief which refers to this Exhibit inasmuch as it does not appear that the Exhibit is a part of the record developed at the hearing in this matter. See Washington Hospital Center, 270 NLRB 396 fn. 1 (1984). I deny the Motion to Strike the second sentence on page 2 of the Petitioner/Union's brief inasmuch as that sentence is based upon record testimony.

On May 5, 1999, the Regional Director for Region Four issued a Decision and Direction of Election in Case 4-RC-19644 wherein the Unit was found to be an appropriate unit for collective bargaining purposes. In that Decision, the Regional Director further found, contrary to the assertion of the Union, that Ubarry was an office clerical who lacked a community of interest with employees in the Unit. Accordingly, the Regional Director excluded Ubarry from the Unit. Thereafter, the Petitioner filed a Request for Review of the Regional Director's Decision with respect to the exclusion of Ubarry. By Order dated May 26, 1999, the Board determined that a substantial issue existed with respect to the exclusion of administrative assistant Ubarry from the Unit, but that the issue could best be resolved through the use of the challenge procedure. Accordingly, the Board permitted Ubarry to vote by challenged ballot in the election. At the election which was conducted in Case 4-RC-19644, the Union received a majority of the valid votes cast, and the challenges were not determinative. On June 15, 1999, the Union was certified as the collective-bargaining representative for the Unit in Case 4-RC-19644. Since the issue of Ubarry's placement in the Unit remained unresolved, the Union, following the issuance of the Certification, filed the instant unit clarification petition.

The Union contends, contrary to the Employer, that Ubarry is a plant clerical employee who shares a community of interest with the maintenance technicians and, accordingly, must be included in the Unit.

As set forth more fully in the Decision and Direction of Election in Case 4-RC-19644, the Employer employs two groups of hourly employees at Northgate II, specifically, approximately 13 property attendants (formerly referred to as security guards) and 8 maintenance technicians. The maintenance technicians have a wide range of maintenance related duties, including repairing damage to the housing units when the tenants leave, repairing or replacing window panes, tiling floors, cleaning the apartments, bathrooms and common areas, and painting. The maintenance technicians report to the Director of Physical Plant, Joe Sannino, who in turn reports to Property Manager Thomas.

Four clerical employees are employed at Northgate II, specifically, the leasing agent (Maria Colon), the rental clerk (Sonia Saenz), the administrative assistant to social services (Sonia Morales) and Ubarry. Colon, Saenz and Ubarry are supervised by Thomas.⁴ Morales reports to Social Services Department Manager Tammy Hargrove.⁵ All four clerical employees are salaried⁶ and work between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. Ubarry now works in an area adjacent to the office utilized by Thomas on the ground floor of Northgate II. Thomas' office and Ubarry's work area are both located near and to the left of the front vestibule leading to the lobby of the building.⁷ Colon and Saenz work in an office located immediately to the right of the vestibule. The maintenance area is located in the left rear area on the structure's ground floor. This area is separated from the vestibule and the two offices by the lobby, security office, conference rooms, mailroom and a janitorial room. Unlike the maintenance technicians, who wear uniforms, Ubarry, like the other clerical employees, dresses in "civilian" clothing.

Ubarry is the clerical employee who is responsible for performing the myriad of administrative tasks associated with the maintenance of the apartments and housing units at Northgate II, rather than the clerical tasks associated with the leasing and rental of the housing units. Thus, Ubarry is responsible for answering calls from tenants who need maintenance work performed. After receiving such a call, Ubarry will type the request into the computer as a work order and will place the printed work order on a table in her work area for a maintenance

⁴ While Ubarry testified that her direct supervisor was Sannino, the record reflects that her duties and present location are primarily to assist Thomas.

⁵ Morales is responsible for, inter alia, scheduling appointments for the social service care managers, scheduling physician appointments of tenants, preparing the tenants' monthly activity calendar and other clerical duties.

⁶ Ubarry's salary is paid from the maintenance portion of Northgate II's budget.

⁷ Sannino works in the conference room which is located immediately behind the area in which Ubarry works.

technician to come and retrieve.⁸ Ubarry is also responsible for conducting annual inspections of the residential units prior to their yearly “recertification”.⁹ In performing the annual inspections, Ubarry completes an evaluation of the maintenance of the unit including an evaluation of the conditions of the unit’s bathrooms, kitchens, doors, walls and ceilings. Leasing agent Colon periodically prepares a list for Ubarry setting forth the residential units to be inspected within the next specified time period together with the date the “recertification” must be completed. After Ubarry conducts the inspection, she will notify Colon whether the unit has “passed” i.e., whether the unit meets the requisite maintenance standards. If there are repairs that need to be performed, Ubarry notifies rental agent Saenz with respect to those damages attributable to the tenant. Saenz will then bill the tenant for the cost of the repairs. Ubarry prepares work order for all repairs to be done, with a copy submitted to Saenz for those considered tenant damage. After the repairs are made by the maintenance technicians, Ubarry sometimes will reinspect the unit.¹⁰

Ubarry testified that she generates 30 to 40 work orders per day. She further testified that each work order takes between 2 to 10 minutes to prepare.¹¹

In addition to the above, Ubarry, as the administrative assistant to Thomas, is responsible for answering Northgate II’s main telephone line, the line primarily utilized by

⁸ Sannino is the individual who assigns the work orders to the specific maintenance technicians. There is no evidence to indicate that the maintenance technicians engage in discussions with Ubarry about the work orders as they are retrieved.

⁹ A “recertification” is the procedure wherein the amount of a tenant’s rent is recalculated for the next 12-month period. Ubarry testified that she conducts 25 to 50 or 60 residential unit inspections a month and . that, in her absence, Sannino would conduct the inspections. Each inspection takes about 20 to 30 minutes to complete.

¹⁰ Ubarry testified at the hearing in Case 4-RC-19644 that for “housekeeping” reasons she might need to do a “reinspection”. She denies that she ever “checks” the work of the maintenance technicians. The record is not clear as to how Ubarry learns that repairs have been completed, i.e. whether Sannino or a maintenance technician orally informs her that a job has been completed or whether some type of document is submitted to Ubarry showing that the work has been done.

¹¹ It thus appears that Ubarry’s testimony that this function occupies 75 to 80 percent of her work day is exaggerated.

Thomas¹²; preparing purchase orders for supplies for the entire facility, including, but not limited to the maintenance department¹³; placing calls to vendors for supplies such as toilet bowls, refrigerators and electric switches¹⁴; and maintaining various files and typing memoranda and correspondence for Thomas, including notices to tenants and employment references. Further, Ubarry is responsible for assisting Thomas with the payroll for all the hourly employees, both the property attendants and the maintenance technicians. In this regard, Ubarry reviews employee timecards to calculate the total hours each employee worked for the week. She will then handwrite the total weekly hours worked for each employee onto a separate form, and will submit that form to Thomas to process the payroll. If, during the week, Ubarry discovers that an employee's time card reflects that the employee was tardy, Ubarry prepares a form addressed to the employee advising that the employee will not be paid for those hours the employee was tardy.¹⁵ Ubarry also checks employees' leave requests to ascertain whether they have available leave time.

The record affirmatively establishes that Ubarry, herself, does not do any maintenance work at Northgate II and that the maintenance technicians do not substitute or fill in for Ubarry whenever she is absent from work. There is no evidence that Ubarry performs clerical tasks for Sannino.

¹² The leasing agent and rental agent have a telephone line for their use. Ubarry will answer that telephone line whenever Colon and Saenz are unavailable.

¹³ The purchase orders are signed by Thomas. Ubarry testified that office supplies for the leasing and rental department are ordered by either Colon or Saenz. However, the record indicates that Ubarry physically prepares the purchase order for these supplies.

¹⁴ It appears that to a large extent Ubarry determines whether particular items need to be purchased, particularly with respect to those items located in the residential units.

¹⁵ Each form sets forth the date of the tardiness as well as the phrase "continued lateness will result in disciplinary action and/or employment termination." There is no evidence that Ubarry is involved in any decision to discipline an employee for tardiness, other than for preparing the aforementioned forms which are given to the employee after Thomas' approval.

Contrary to the contention of the Union, the record clearly establishes that Ubarry is an office clerical employee who does not share a community of interest with the maintenance employees. Ubarry is a salaried employee who, unlike the maintenance technicians, spends most of her time in an office area adjacent to Thomas' office, does not wear a uniform or punch a timeclock, and does not perform any maintenance work. In the performance of her duties, Ubarry is responsible for typing general correspondence and memos for management, taking telephone messages, maintaining time records for all hourly employees and preparing tardiness reports from this information, processing hourly employee requests for vacation, filing various documents, including vendor-related documents, and performing other clerical tasks for Thomas as directed. Clearly, these tasks are those typically carried out by office clerical employees. See, e.g., PECO Energy Company, 322 NLRB 1074, 1085-1086 (1997); Weldun International, Inc., 321 NLRB 733, 734-735 (1996), enforced in pertinent part 165 F.3d 28 (6th Cir. 1998) (unpublished); Dunham's Athleisure Corporation, 311 NLRB 175, 176 (1993).

However, the Union claims that Ubarry should be included in the Unit because she has frequent daily contact and interaction with the maintenance technicians by virtue of her responsibilities, which consume a substantial percentage of her work time,¹⁶ in generating work orders for the repair of the residential units based upon tenant complaints or her annual inspections of the apartments. In this regard, the record evidence shows, contrary to the contention of the Union, not only that such contact is minimal, but also that Ubarry's aforementioned duties are not significantly functionally integrated with those of the maintenance technicians. Thus, there is no evidence that Ubarry converses with the maintenance technicians with regard to the manner in which the repairs are to be performed, the priority in which the repairs are to be made, or any problems that the maintenance technicians may encounter in making the repairs. Further, there is no evidence that when the repairs are being

¹⁶ See footnote 11 and accompanying text.

made, Ubarry is in the residential units observing the maintenance technicians in their work, or offering suggestions to them. Finally, the record does not establish that Ubarry has any significant contact with the maintenance technicians concerning the completed work orders.

While Ubarry's responsibilities with respect to the generation of work orders to facilitate the maintenance of the rental units, and her inspection of the residential units in order for her to evaluate the condition of those units from a maintenance standpoint, are functions which are clearly associated with maintenance, Ubarry also performs a myriad of clerical duties, as described above, which transcend those which could arguably be found to be directly related to the work performed by the maintenance technicians. Moreover, it is significant that unlike the cases relied upon by the Union¹⁷ and other cases wherein the Board found clerical employees to be plant clerical rather than office clerical employees,¹⁸ Ubarry has limited contact and interaction with the maintenance technicians. Accordingly, I find that in these circumstances Ubarry is an office clerical employee, rather than a plant clerical employee. I shall, therefore, exclude the position of administrative assistant to the property manager from the bargaining unit. PECO Energy Company, supra; Weldun International, Inc., supra; Dunham's Athleisure Corporation, supra.

Accordingly, I find that the existing unit of maintenance technicians should be clarified to exclude the position of the administrative assistant to the property manager.

¹⁷ Nor-Cal Ready Mix, Inc., 327 NLRB No. 187 (1999); Syracuse University, 325 NLRB 162 (1997); Hamilton Halter Company, 270 NLRB 331 (1974).

¹⁸ See, e.g., J. Ray McDermott & Co., Inc., 240 NLRB 864 (1979).

ORDER

IT IS HEREBY ORDERED that the existing collective-bargaining unit of maintenance technicians employed by the Employer, which is represented by Communications Workers of America, AFL-CIO, be, and it hereby is, clarified so as to exclude the position of administrative assistant to the property manager.

Dated at Pittsburgh, Pennsylvania, this 3rd day of December 1999.

/s/Gerald Kobell
Gerald Kobell
Regional Director, Region Six

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